THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.7050 OF 2006

DATED: 10-04-2006

BETWEEN

Sri Nagalingeswara Temple,
Rep. by its Trustee, G. Kasiviswanath
Sastry, S/o. G. Thippaiah, H.No.2/433,
Nandyal, Nandyal Mandal, Kurnool
District.

...PETITIONER

AND

Nandyal Municipality,
Rep. by Commissioner,
Nandyal Mandal,
Kurnool District.

...RESPONDENT

ORDER:

Petitioner seeks a Writ of Mandamus to declare the proposed action of the respondent in demolishing the petitioner-temple bearing No.2/433, 2/432 situated at N.K. Road, Nandyal, Kurnool District as
as illegal and arbitrary.

Learned counsel for the petitioner submits that the petitioner-temple was constructed 400 years ago and the ancestors of the present trustee used to look after the affairs of the temple and perform nitya poojas and in order to maintain the temple the members of his family constituted a trust in 2004. While so, the respondent corporation has given a statement regarding their proposed action of road widening intending to widen the road to 60 feet from the existing 30 feet by demolishing the structures obstructing the road widening programme. He further submits that the respondent corporation in pursuance of the proposed action of road widening has marked the

structures of the petitioner-temple.

The learned counsel further submits that for the purpose of widening the road the respondents earmarked the structures belonging to the petitioner-temple and the respondents are proposing to demolish the same without giving any notice and without following due procedure prescribed in law. He further submits that even under the Andhra Pradesh Municipalities Act, 1965 (for short 'the Act') without acquiring the lands of the private citizens, portion of any property cannot be taken away for the purpose of road widening, either by way of private negotiations or by way of initiating proceedings under the Act.

No doubt widening/laying of the road is in the public interest but while laying the road, if any property of private individual is coming in the way, it is for the respondents to acquire the same by following due process of law. This Court disposed of a number of writ petitions directing the respondent not to demolish the houses of the private citizens without following due process of law or private negotiations.

Having regard to the facts and circumstances of the case,
the respondents are directed not to demolish the structures of the petitioner-temple without following due process of law either under Section 172(2) or 174 of the Act or by initiating proceedings under the Land Acquisition Act, 1894.

The writ petition is accordingly disposed of.

_____

V. ESWARAIAH, J

April 10, 2006
DSK